

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1061 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

-----  
MITHUDAS CHETANDAS

Versus

STATE OF GUJARAT

-----  
Appearance:

MR KG SHETH for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/04/98

C.A.V. JUDGEMENT (R.P.Dholakia,J.)

The present appellant-original accused has preferred this appeal against the judgment and order passed by the learned Add. Sessions Judge, Ahmedabad City, in Sessions Case No.34 of 1997 whereby the present

appellant has been convicted to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- (in default, to suffer imprisonment for one more year) for the offences punishable under Sec.8(c) read with Sec.22 of Narcotic Drugs and Psychotropic Substance Act.

.RS 2

#. The facts in short are that on 14-12-1996, P.I., Shri N.N.Pathan, State Narcotic Cell, CID Crime, Gujarat, Ahmedabad, on receiving an information that present appellant is keeping narcotic substance in his custody and selling the same outside his residence, sent Head Constable, Mr.Gosai to verify the same. After verifying the same, he reached there with panchas and Police Officers and appellant-accused was caught there. His personal search was carried out and 34 pieces of narcotic substance containing 160 gms. of charas was found from his possession. Necessary formalities were completed and accused was sent alongwith the muddamal, panchnama, complaint, etc. for registering the offence. Necessary formalities were completed there and muddamal was sent to FSL and on receiving the report from FSL, charge-sheet was filed against the accused and charge was framed by the learned Addl. City Sessions Judge.

#. The prosecution has led the oral evidence as well as produced the documentary evidence to prove the guilt against the accused. After hearing learned APP and learned advocate appearing for the accused, learned Addl. City Sessions Judge has convicted the accused, against which, the present appeal is preferred.

#. The learned advocate appearing for the appellant has mainly argued that panchas have not supported the prosecution case beyond reasonable doubt regarding the recovery of muddamal from the appellant-accused. He has further argued that relevant provisions of NDPS Act were not followed by the investigating agency. Therefore, the accused was required to be acquitted.

#. On going through the judgment and after hearing the learned Addl. Public Prosecutor, it appears that, while carrying out personal search on the accused, all relevant formalities have been properly completed by the investigating agency. As far as the panchas are concerned, they have supported the say of the prosecution to some extent. But the fact remains that other witnesses, in whose presence the appellant-accused has been searched and muddamal charas has been recovered, have fully supported the say of the prosecution and

nothing has come out from their cross-examination. Panchnama has been proved by the prosecution through Investigating Officer and merely panchas have not supported the prosecution case does not mean that accused should be given the benefit as because the prosecution has proved the case beyond reasonable doubt. It is required to be noted that the appellant-accused was given sufficient opportunity before carrying out his personal search. The report of FSL indicates that the muddamal, which has been sent for analysis is a narcotic substance.

#. We do not find any substance in the submissions made by learned advocate on behalf of the appellant and we are of the view that no illegality or irregularity has been committed by learned Addl. City Sessions Judge. Therefore, no interference is required to be made in the judgment and order passed by learned Addl. City Sessions Judge, Ahmedabad in Sessions Case No.34 of 1997.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Appeal stands rejected accordingly.

\*\*\*\*

radhan/